

EXHIBIT B

From: [Maier, Eric J.](#)
To: [Yung, Eva H.](#)
Cc: [Thorne, John](#); [Bird, Daniel G.](#); [Henningson, Sven E. \(Trip\)](#); [Hirschboeck, Mark P.](#); [Reiser, Craig M.](#); [Boisvert, Caroline P.](#); [Haws, Claire L.](#); [MURRAY, Sean](#); [BAYOUMI, Jeanette](#); [ZWEIFACH, Ben](#); [BOSCO, Veronica](#); [SYRMOS, Alexia](#); rob.mccallum@freshfields.com
Subject: RE: Gannett Amended Complaint
Date: Thursday, May 16, 2024 4:50:24 PM
Attachments: [image001.png](#)

Caution: External Email

Eva,

We disagree that Gannett has changed its position on whether Rule 15 requires Google to file its answer by May 29. On March 21, we explained that Google's proposed motions to dismiss offered no discovery efficiencies and suggested that the Court should instead "rule on Daily Mail's and Gannett's state law claims [at] summary judgment, when it will have the benefit of a fuller factual record, and there is no risk of the Court ruling on Daily Mail's and Gannett's state law claims twice: once on a motion to dismiss and again at summary judgment." Dkt. 728 at 5. We repeated that position on April 19 and April 30. See Dkt. 757 at 2; Dkt. 769 at 2. In the ordinary course of litigation, answers are filed before motions for summary judgment. Nothing in Gannett's letters to the Court suggested that Gannett consented to Google's withholding its answer to Gannett's state law claims until after the close of all discovery. Indeed, when Google requested that the Court reconsider the deadline for Google's answer to Gannett's federal antitrust claims, we objected on March 25 and noted that "Daily Mail and Gannett have conducted all discovery to date without Google's statement of its purported defenses to their claims, and Google should not be afforded any further delay." Dkt. 733 at 2.

While we do not believe that an extension of the 14-day deadline for Google's amended answer is warranted – indeed, your email below suggests that Google does not intend to plead any additional defenses and Google has previously stated that Gannett's amendments added "only a handful of allegations," Dkt. 766 at 2 – we are willing to consent to a one-week extension of Google's time to answer (i.e. until June 5). Gannett will not consent (and has never consented) to a schedule that permits Google to withhold its full responsive pleading until after all discovery has concluded.

To the extent that you are not willing to accept the offered extension and intend to file something with the court, we ask that you include this response with that filing.

All the best,

Eric

Eric J. Maier

Kellogg, Hansen, Todd, Figel, & Frederick, P.L.L.C.

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From: Yung, Eva H. <eyung@axinn.com>

Sent: Thursday, May 16, 2024 11:53 AM

To: Maier, Eric J. <emaier@kelloggghansen.com>

Cc: Thorne, John <jthorne@kelloggghansen.com>; Bird, Daniel G. <dbird@kelloggghansen.com>; Henningson, Sven E. (Trip) <shenningson@kelloggghansen.com>; Hirschboeck, Mark P. <mhirschboeck@kelloggghansen.com>; Reiser, Craig M. <creiser@axinn.com>; Boisvert, Caroline P. <cboisvert@axinn.com>; Haws, Claire L. <chaws@axinn.com>; MURRAY, Sean <Sean.Murray@freshfields.com>; BAYOUMI, Jeanette <Jeanette.Bayoumi@freshfields.com>; ZWEIFACH, Ben <Ben.Zweifach@freshfields.com>; BOSCO, Veronica <Veronica.Bosco@freshfields.com>; SYRMOS, Alexia <Alexia.Syrmos@freshfields.com>; rob.mccallum@freshfields.com; Yung, Eva H. <eyung@axinn.com>

Subject: [EXTERNAL] RE: Gannett Amended Complaint

Counsel,

We are surprised at Gannett's sudden change in position, given that Gannett insisted on deferring until the summary judgment stage any challenge to the sufficiency of its state law claims. The Answer that Google filed on March 29, see ECF No. 737, clearly identifies Google's existing defenses. If Gannett insists that Google waste time responding to the state law claims that Gannett successfully persuaded Judge Castel to permit Gannett to file before Google has had any opportunity to challenge the sufficiency of those claims under Rules 8, 9, and 12, we will consider us to be at impasse and proceed accordingly.

If we do not hear that you are willing to negotiate an appropriate schedule by close of business today, we will raise Gannett's baseless about-face with the Court on Friday.

We reserve all rights.

Yours,

Eva

Eva H. Yung
Associate



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From: Maier, Eric J. <emaier@kelloggghansen.com>
Sent: Wednesday, May 15, 2024 6:11 PM
To: Yung, Eva H. <eyung@axinn.com>
Cc: Thorne, John <jthorne@kelloggghansen.com>; Bird, Daniel G. <dbird@kelloggghansen.com>; Henningson, Sven E. (Trip) <shenningson@kelloggghansen.com>; Hirschboeck, Mark P. <mhirschboeck@kelloggghansen.com>; Reiser, Craig M. <creiser@axinn.com>; Boisvert, Caroline P. <cboisvert@axinn.com>; Haws, Claire L. <chaws@axinn.com>; MURRAY, Sean <Sean.Murray@freshfields.com>; BAYOUMI, Jeanette <Jeanette.Bayoumi@freshfields.com>; ZWEIFACH, Ben <Ben.Zweifach@freshfields.com>; BOSCO, Veronica <Veronica.Bosco@freshfields.com>; SYRMOS, Alexia <Alexia.Syrmos@freshfields.com>; rob.mccallum@freshfields.com
Subject: RE: Gannett Amended Complaint

Caution: External Email

Hi Eva,

Thank you for consenting to Gannett's additional amendment to paragraph 18 of its amended complaint. As you likely saw, we filed Gannett's amended complaint today.

Gannett does not agree that Google should be permitted to delay providing a full answer to Gannett's complaint. In PTO 12, Judge Castel granted Gannett's request for leave to file its amended complaint. Under Rule 15, Google's answer to Gannett's amended complaint is due May 29. See Fed. R. Civ. P. 15(a)(3). In PTO-10 and PTO-12 Judge Castel denied Google's request to file a motion to dismiss at this time, meaning that there is no pending motion that would otherwise stay Google's time to answer. See Fed. R. Civ. P. 12(a)(4). Gannett filed its complaint nearly one year ago and has been required to conduct all discovery to date without a full answer to its allegations and without a full accounting of Google's alleged defenses. We see no reason why Google should be permitted to delay providing a complete responsive pleading.

All the best,

Eric

Eric J. Maier

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From: Yung, Eva H. <eyung@axinn.com>

Sent: Monday, May 13, 2024 4:12 PM

To: Maier, Eric J. <emaier@kelloggghansen.com>

Cc: Thorne, John <jthorne@kelloggghansen.com>; Bird, Daniel G. <dbird@kelloggghansen.com>; Henningson, Sven E. (Trip) <shenningson@kelloggghansen.com>; Hirschboeck, Mark P. <mhirschboeck@kelloggghansen.com>; Reiser, Craig M. <creiser@axinn.com>; Boisvert, Caroline P. <cboisvert@axinn.com>; Haws, Claire L. <chaws@axinn.com>; Yung, Eva H. <eyung@axinn.com>; MURRAY, Sean <Sean.Murray@freshfields.com>; BAYOUMI, Jeanette <Jeanette.Bayoumi@freshfields.com>; ZWEIFACH, Ben <Ben.Zweifach@freshfields.com>; BOSCO, Veronica <Veronica.Bosco@freshfields.com>; SYRMOS, Alexia <Alexia.Syrmos@freshfields.com>; rob.mccallum@freshfields.com

Subject: [EXTERNAL] RE: Gannett Amended Complaint

Eric,

Thank you for the update. Google does not object to Gannett's amendment as proposed.

On a related note, in light of PTO 12, in which Judge Castel accepted plaintiffs' position that Google's challenge to the sufficiency of plaintiffs' state law claims under Rule 12 should be deferred until the summary judgment stage, we do not believe any further responsive pleading will be due at this time. For clarity of the record, we would like to propose a stipulation to the effect that the parties will negotiate a schedule for Google to file amended answers addressing plaintiffs' state law claims if one is necessary following Google's Rule 12 challenge to the sufficiency of state law claims. Please let us know as soon as possible whether this is acceptable so we can prepare a draft stipulation and order for your review.

Yours,

Eva

Eva H. Yung
Associate



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From: Maier, Eric J. <emaier@kelloggghansen.com>
Sent: Friday, May 10, 2024 1:47 PM
To: Reiser, Craig M. <creiser@axinn.com>; Yung, Eva H. <eyung@axinn.com>; Boisvert, Caroline P. <cboisvert@axinn.com>; Haws, Claire L. <chaws@axinn.com>
Cc: Thorne, John <jthorne@kelloggghansen.com>; Bird, Daniel G. <dbird@kelloggghansen.com>; Henningson, Sven E. (Trip) <shenningson@kelloggghansen.com>; Hirschboeck, Mark P. <mhirschboeck@kelloggghansen.com>
Subject: Gannett Amended Complaint

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Counsel,

In light of Pre-Trial Order No. 12, Gannett plans to file its amended complaint in the next week. Gannett needs to make one small additional amendment not included in the proposed amended complaint filed on April 19. Gannett recently moved its headquarters from McClean, VA to New York, NY. So that the allegations in Gannett's amended complaint are accurate, we need to amend paragraph 18 as follows:

- **Paragraph 18:** Plaintiff Gannett Co., Inc. ("Gannett") is a publicly traded company incorporated and existing under the laws of the State of Delaware and headquartered in ~~McLean, Virginia~~ New York, New York. With over 500 news and digital media brands, Gannett is the largest news publisher in the United States. Gannett was formed in November 2019 as the result of a merger between New Media Investment Group, Inc., parent of GateHouse Media, Inc., and Gannett Co., Inc., now known as Gannett Media Corp. and a wholly owned subsidiary of Gannett.

Please let us know by Monday, May 13, whether Google consents to this additional amendment.

Thank you,

Eric

Eric J. Maier

Kellogg, Hansen, Todd, Figel, & Frederick, P.L.L.C.

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